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National Association of Regulatory Utility Commissioners

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August 22,2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Ms. Magali R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW Portals II Building
Washington, DC 20544

RE: Errata to NARUC's Initial Comments filed August 22,2001 in the proceeding captioned: "*In the Matter of Developing a Unified Intercarrier Compensation Regime, CC* Docket No. 01-92.

Dear Ms. Salas:

Yesterday, NARUC filed initial comments in the above captioned proceeding that inadvertently included some mistakes. Specifically, (1) there was a period in front of the last paragraph on page 6, **(2)** the conclusion included the following sentence which should have been deleted: "Given the complexities of these questions and issues, it was prudent for the Commission to allow a long comment period in this proceeding," and (3) the word "state" was not capitalized in several places in the comments.

For your convenience, I have attached a corrected version of the comments to this letter.

If you have any questions about this or any other NARUC positions or comments, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org.

Respectfully Submitted,

James Bradford Ramsay
GENERAL COUNSEL

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)		
	)		
Developing a Unified Intercarrier Compensation Regime	)	**CC Docket No. 01-92**	ORIGINAL
	)		

INITIAL COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedures, 47 C.F.R. Section 1.49, 1.415, and 1.419 (2000), the National Association of Regulatory Commissioners ("NARUC") respectfully submits these comments on the FCC's Notice of Proposed Rulemaking adopted April 19, 2001, and released April 27, 2001 [FCC 01-132] ("NPRM").[1] NARUC strongly recommends that (1) prior to adoption, the effect of any unified or bill-and-keep regime on market issues be fully investigated by both the federal and State regulators and **(2)** that prior to further consideration of a unified or bill-and-keep system, the FCC refer the proposals and cost allocation issues to the Separations Joint Board for purposes of determining the effect on intrastate and interstate ratepayers and refer universal service issues to the Universal Service Joint Board. Moreover, NARUC opposes a federal unified compensation regime based on bill-and-keep or other alternatives that would preempt State interconnection policies at this time and absent input from the States.

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1 See, *66 Federal Register* 28410 (May *23,* 2001).

In support of these requests, NARUC states as follows:

I. NARUC'S INTEREST

NARUC is a quasi-governmental nonprofit organization founded in 1889. Members include the governmental bodies engaged in the regulation of carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands.

NARUC's mission is to improve the quality and effectiveness of public utility regulation in America. Specifically, NARUC is composed of, ***inter** alia,* State and territorial officials charged with the duty of regulating the telecommunications common carriers within their respective borders. These officials have the obligation to assure that such telecommunications services and facilities as are required by the public convenience and necessity are established, and that services are furnished at rates that are just and reasonable.

In this NPRM, the FCC begins a "fundamental reexamination of all currently regulated forms of intercarrier compensation.'' Specifically, the FCC seeks comments on whether and how to replace the existing variety of inter-carrier compensation methods with a unified approach. The proposals put forth in this proceeding have the potential to affect virtually all customers in all States as well as State and federal policies on universal service, access charges and jurisdictional separations.

Because of the obvious potential impact on State commission policy and procedures, and NARUC's stated goal of promoting more efficient regulation, NARUC has an interest in this proceeding.

II. BACKGROUND

On April 27,2001, the FCC released the Notice of Proposed Rulemaking (NPRM, FCC 01-132) seeking comments on modifications to existing intercarrier compensation agreements and on the feasibility of a unified compensation regime based on a bill-and-keep approach or other alternatives that would encourage efficient use of, and investment in, telecommunications networks, and would promote the development of competition. It is clear from the notice the FCC is considering a regime that may apply to interconnection arrangements between all types of carriers interconnecting with the local network, and all types of traffic passing over the local network. The proposal could result in shifting both State and interstate access to a proposed version of a "bill-and-keep" system of compensation.

In response to this NPRM, NARUC passed a resolution at its July 2001 meetings in Seattle, Washington. A copy of that resolution is attached as Appendix A.

A. Before Further Considering a Unified or Bill-And-Keep System, the FCC Should Refer the Proposals and Cost Allocation Issues to the Separations Joint Board and the Universal Service Issues to the Universal Service Joint Board.

There is no question that the NPRM raises a host of issues that are critically important to NARUC's member commissions. It is also clear that the NPRM has both long-term separations and universal service impacts. Indeed, even the NPRM *explicitly recognizes* that such reform may increase the total end-user prices and affect universal service[2] as well as affect jurisdictional separations.[3]

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2 See, NPRM at ¶ 123, where the FCC notes: "We recognize that modifying our existing intercarrier compensation rules may affect end-user prices." Cf. NPRM at ¶ 124: "Specifically, we seek comment on whether a bill-and-keep approach would affect the Commission's ability to preserve and advance universal service . . ."

3 See, NPRM at ¶ 122.

On universal service, the FCC acknowledges its proposals may generally increase the effective local monthly bill observed by customers and specifically seeks comment on the significance of any change in rate and effect on subscriber penetration rates. In high costs States, local customers may not be able to afford the increase in monthly fees possible under the FCC's bill and keep proposals. This could put upward pressure on State and federal universal service funds to provide funds to keep subscribers on the network. Similarly, changing the method of carrier-to-carrier compensation implicates the universal service components of the CALLS plan. Accordingly, NARUC's July resolution proposes that there be coordination between changes in the federal carrier-to-carrier policy and the existing universal service high cost fund. Under long established procedures, before proceeding further, the possible issues affecting universal service should immediately be referred to the Universal Service Joint Board.

The FCC proposals also effectively change the dividing line between costs recovered through traditional interstate services and those recovered as part of the local bill. As practically, there could well be a shift in costs to local ratepayers, the Separations Joint Board could provide critical insights to illuminate further FCC action. For example, input from the Board would allow the FCC to evaluate whether it is more reasonable to reach its goals through a change in jurisdictional cost assignment rather than through a change in policies affecting access rate design. The NPRM also raises issues closely related to comprehensive review of jurisdictional allocation issues now pending before the Separations Joint Board. Accordingly, NARUC respectfully requests the FCC refer all jurisdictional cost allocation issues immediately to the Joint Board and coordinate on any outstanding cost allocation issues.

B. Prior to adoption, the effect of any unified or bill-and-keep regime on market issues be fully investigated by both thefederal and State regulators.

The NPRM proposes replacing the traditional framework of interexchange access with some form of a bill and keep compensation system. Under bill and keep, carrier-to-carrier fees would be substantially reduced and in some cases eliminated. Instead the end user customers would pay many of those fees – probably via a new monthly fee to recover a substantial portion of the costs of access to and from their homes. Long distance companies' costs would be reduced as their access costs would, to a great extent, be shifted to the end-users. If, as history suggests, long distance companies fail to pass on the savings or only pass them on to select customers, then it is possible bill and keep would lead to a rate increase to all consumers or to a significant portion of them. Indeed, under a unified bill-and-keep regime, consumers would pay a substantial part of the access costs for terminating a call at their home, even if it were a call they did not wish to receive.

Moreover, the local service market could be impacted by bill-and-keep proposals as the FCC also anticipates it could replace in part or in whole reciprocal compensation agreements between local carriers. By essentially transferring some or all of the cost of interconnection from carriers to customers, the FCC believes it may cure some of the competitive market failures it has observed. However, as NARUC's resolution specifically points out, there are questions as to whether bill and keep can equitably resolve those market failures. It is unknown whether bill-and-keep will: (1) provide fair compensation to each carrier in the market, especially if there are imbalances in the type or volume of traffic between the carriers; (2) maintain a reasonable link between the "cost-causer" and the "cost-payer"; (3) provide appropriate economic signals to carriers and their customers; (4) lead to cross-subsidies between low and high volume customers or other customer classes; or (5) create perverse incentives regarding infrastructure development, network configuration, or points of interconnection. Because of the range and complexity of the questions raised by the NPRM, the FCC was prudent to provide a long comment period in this proceeding. Prior to adoption, the effect of bill and keep proposals must be fully investigated – preferably with the benefit of recommendations from both Joint Boards. Additional time may be needed for parties to develop models and arguments to flesh out alternative views on the market implications.

III. CONCLUSION

Besides its effects on the interstate markets, adopting a federal bill and keep system to replace access and reciprocal compensation arrangements has a wide range of potential impacts on State policy concerning rates, universal service, cost allocation issues, infrastructure development, network structures, and various other State policies. As the scope of consequences of adopting a bill and keep system cannot be conformed to respect existing State/federal jurisdictional delineations, further FCC action regarding the bill and keep proposals should only be made in formal consultation with the States. **A** notice and comment proceeding alone will not adequately address these State impacts. For the forgoing reasons, NARUC strongly recommends that (1) prior to adoption, the effect of any unified or bill-and-keep regime on market issues be fully investigated by both the federal and State regulators and (2) that prior to further consideration of a unified or bill-and-keep system, the FCC refer the proposals and cost allocation issues to the Separations Joint Board and refer universal service issues to the Universal Service Joint Board.

Moreover, NARUC opposes a federal unified compensation regime based on bill-and-keep or other alternatives that would preempt State interconnection policies at this time and absent input from the States.

RESPECTFULLY SUBMITTED

BY:

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AUGUST 21,2001

APPENDIX– NARUC July 2001

Resolution Regarding The Development of a Unified "Bill-and-Keep" Intercarrier Compensation Regime

WHEREAS, The Federal Communications Commission's (FCC's) Office of Plans and Policy on December 13, 2000 released two working papers proposing new ways of analyzing inter-carrier compensation; and

WHEREAS, On April 27, 2001, the FCC released a Notice of Proposed Rulemaking (NPRM, FCC 01-132) seeking comments on modifications to existing intercarrier compensation agreements and on the feasibility of a unified compensation regime based on a bill-and-keep approach or other alternatives that would encourage efficient use of, and investment in, telecommunications networks, and would promote the development of competition; and

WHEREAS, This regime may apply to interconnection arrangements between all types of carriers interconnecting with the local network, and all types of traffic passing over the local network; and

WHEREAS, The FCC is considering moving both State and interstate access to a proposed version of a "bill-and-keep" system of compensation; and

WHEREAS, Long distance companies would see reduced expenses as their access costs would be shifted to the end-users; and

WHEREAS, The FCC's NPRM recognizes that such reform may increase the total end-user prices and affect universal service; and

WHEREAS, The impact of this proposal has not been examined or referred to the Separations or the Universal Service Joint Board; and

WHEREAS, Under a unified bill-and-keep regime, consumers would pay a substantial part of the access costs for terminating a call at their home, even **if** it was a call they did not wish to receive; and

WHEREAS, It is unknown whether bill-and-keep will: (1) provide fair compensation to each carrier in the market, especially if there are imbalances in the type or volume of traffic between the carriers; **(2)** maintain a reasonable link between the "cost-causer" and the "cost-payer"; (3) provide appropriate economic signals to carriers and their customers; **(4)** lead to cross-subsidies between low and high volume customers or other customer classes; or *(5)* create perverse incentives regarding infrastructure development, network configuration, or points of interconnection; and

WHEREAS, The FCC's proposal will change the dividing line between costs recovered through traditional interstate services and those recovered as part of the local bill; and

WHEREAS, Parties require sufficient information regarding the effect on intrastate ratepayers to provide informed comments; and

WHEREAS, A notice and comment proceeding will not adequately address impacts on States; and

WHEREAS, It is unclear whether the FCC intends to wait until after the CALLS agreement expires or will act sooner; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) convened in its July 2001 Summer Committee Meetings in Seattle, Washington, strongly recommends that prior to adoption, the effect of any unified or bill-and-keep regime on market issues be fully investigated by both the federal and State regulators; and be it further

RESOLVED, That prior to further consideration of a unified or bill-and-keep system, NARUC advocates the FCC refer the proposals and cost allocation issues to the Separations Joint Board for purposes of determining the effect on intrastate and interstate ratepayers and refer universal service issues to the Universal Service Joint Board; and be it further

RESOLVED, That NARUC opposes a federal unified compensation regime based on bill-and-keep or other alternatives that would preempt State interconnection policies at this time and absent input from the States; and be it further

RESOLVED, That the NARUC General Counsel be directed to file and take any appropriate actions to further the intent of this resolution.

Sponsored by the Committees on Consumer Affairs and Telecommunications Adopted by the NARUC Board of Directors July 18, 2001